UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT - N.D. OF N.Y.
FILED
MAR 12 2008
AT ___ O'CLOCK ___
Lawrence K. Baerman, Clerk - Syracuse

-----------------------------------X

JOHN HATZFELD, #95A0396,

Plaintiff,

-against-

THOMAS G. EAGEN, Director,IGP,CORC;
JOHN W. BURGE, Superintendent,ACF;
NANCY RYERSON,RN, Nurse Admin.,ACF;
ANTHONY GRACEFFO, M.D.,ACF;
PANG KOOI, M.D.,ACF,

Defendants.

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INMATE CIVIL RIGHTS COMPLAINT PURSUANT TO 42 U.S.C. §1983 & MEMORANDUM OF LAW

Index No. 9:08-cv-283 (LES)

Plaintiff in the above-captioned action allege(s) as follows:

JURISDICTION

1) This is a civil action seeking relief and/or damages to defend the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 USC §1983. The Court has jurisdiction over this action pursuant to 28 USC §§1331, 1343(3) and (4) and 2201.

PARTIES

2) Plaintiff: John Hatzfeld #95A0396
Address: Plaintiff; Pro se
Cayuga Correctional Facility
P.O. Box 1186
Moravia, New York 13118

3) Defendants

a. Defendant: Thomas G. Eagen
Official Position: Director, Inmate Grievance Program, CORC
Address: 1220 Washington Avenue
Albany, New York 12226

b. Defendant: John W. Burge
Official Position: Superintendent, Auburn Correctional Facility
C/O 1220 Washington Avenue
Albany, New York 12226

c. Defendant: Nancy Ryerson, RN
Official Position: Nurse Administrator, Auburn Correctional Facility
135 State Street
Auburn, New York 13024

d. Defendant: Anthony Graceffo, M.D.
Official Position: (Former) M.D.,Auburn Correctional Facility
Address: C/O 1220 Washington Avenue
Albany, New York 12226

e. Defendant: Pang Kooi, M.D.
Official Position: M.D.,Auburn Correctional Facility
Address: 135 State Street
Auburn, New York 13024

PLACE OF CONFINEMENT

4)

a. Is there a prisoner grievance procedure at this facility?

(X) YES ( ) NO

b. If your answer to 4(a) is YES, did you present the facts relating to your complaint in this grievance program?

(X) YES ( ) NO

If your answer to 4(b) is YES:

(i) What steps did you take?

The inmate Grievance Program consists of a 3-Step process starting with a complaint filed with the IGRC (Step-1); an appeal reviewable by the superintendent of the facility (Step-2); and an appeal to the Central Office Review Committee (Step-3). Plaintiff followed the prescribed procedure without positive result.

(ii) What was the final result of your grievance?

The final result of my grievance, dated 9/28/05, was:

" GRIEVANT'S REQUEST UNANIMOUSLY DENIED WITH CLARIFICATION
Upon full hearing of the facts and circumstances in the instant case, and upon recommendation of the Division of Health Services, the action requested is hereby denied with clarification. CORC upholds the determination of the Superintendent for reasons stated.
CORC advises grievant to follow staff direction, and participate in the ASAT workbook program. CORC asserts that the Department's Hepatitis C Primary Care Practice Guidelines are being followed. CORC also advises the grievant to address his medical concerns through sick call."

PREVIOUS LAWSUITS

5)

a. Have you ever filed any other lawsuits in any state and federal court relating to your imprisonment ?
(X) YES ( ) NO

b. If your answer to 5(a) is YES you must describe any and all lawsuits, currently pending or closed.

1. Plaintiff: John Hatzfeld
   Defendant: Hans Walker
   Federal Habeas Corpus, Eastern District of New York
   Docket #: CV-00-749
   Before: Honorable J. Mishler
   Filed: February 4, 2000
   Disposition: Dismissed, November 22, 2000

2. Plaintiff: John Hatzfeld
   Defendant(s): Glen S. Goord, et al.
   Federal Civil Rights Complaint pursuant to 42 USC§1983, USDC,NDNY
   Docket #: 9:04-CV-0159
   Before: Hon. Lyle E. Strom and Hon. David R. Homer
   Filed: February 12, 2004
   Disposition: Pending

3. Plaintiff: John Hatzfeld
   Defendant: The State of New York
   Court of Claims
   Docket #: 113559
   Before: Hon. Renee Forgensi Minarik
   Filed: April 9, 2007
   Disposition: Pending

4. Plaintiff: John Hatzfeld
   Defendant: Harold Graham
   State Habeas Corpus
   Docket #: 07-0919
   Before: Hon. Mark H. Fandrich
   Filed: July 11, 2007
   Disposition: Pending

STATEMENT OF FACT & MEMORANDUM OF LAW

6)

a. In April of 2000 I was notified that I was HCV Positive (Hepatitis C Virus) by P.A. Laux at the Auburn Correctional Facility. This diagnosis was the result of a blood test I had requested due to the general feeling of being unwell. (This test was performed on 3/24/00)

b. On September 30, 2002 a Liver Biopsy was performed at the University Hospital in Syracuse. The recommendation of Dr. Holtzapple, a Board Certified Gastroenterologist, stated:

> "48 year old male, hepatitis C with grade 2/4 inflammation and stage 3/4 fibrosis. He meets criteria for therapy and may benefit from therapy in that the progression of fibrosis may be halted. Rec: (1) Pegylated interferon therapy combined, (2) Ribaviron 1000mg daily, (3) Check hepatitis C viral level in three(3) months, (4) Check genotype". **(EXHIBIT A)**

c. On December 26, 2002 Dr. Anthony Graceffo informed me of the results depicted above and asked me to sign a waiver to participated in the Alcohol and Substance Abuse Program / Residential Substance Abuse Program (ASAT/RSAT). On this date I informed Dr. Graceffo, verbally and in writing, that I wanted the treatment recommended by Dr. Holtzapple and that I refuse to participate in the ASAT/RSAT Program due to my religious beliefs. These programs are spiritually based and plaintiff, being an atheist, finds the concepts of spirituality repugnant also, my Institutional Disciplinary Records reflects no violations for alcohol and/or substance abuse.

d. As a result, Dr. Graceffo refused to treat me for this disease and subsequently, I filed a Civil Action,# 9:04-CV-0159, after following and exhausting all Departmental procedures. This Civil Action is currently pending in the United States District Court for the Northern District of New York.

e. Prior to my refusal to participate in the ASAT/RSAT Program my blood was being monitored every 3 to 4 months to track the progression of this disease. Upon my refusal to participate in the ASAT/RSAT Program the monitoring of my blood ceased and didn't resume until 1/07/04. (The last reported blood test prior to refusal was performed on 9/16/02)

f. While the aforementioned Civil Action was pending plaintiff became aware of another inmate, Jeffrey L. Pelkey #00-A-4448, who was receiving treatment for HCV, from Dr. Graceffo, without being forced to participate in ASAT/RSAT prior to his treatment.

g. In Affidavit, **(EXHIBIT B)**, Mr. Pelkey states, in sum and substance, that: He has a long history of substance abuse, has tested positive, twice, for controlled substance abuse during this term of incarceration, refused to participate in the ASAT/RSAT Program and received treatment for HCV notwithstanding his refusal.

h. On June 30, 2005 I was seen by Dr. Pang Kooi in the ACF Clinic to discuss, what plaintiff believed to be, a change in the DOCS's requirements pertaining to HCV treatment. During this discussion I showed Dr. Kooi inmate Pelkey's Affidavit, which he read, he refused to treat me until I participated in the ASAT/RSAT Program, then agreed to refer me to Dr. Graceffo.

i. On July 21, 2005 I was seen by Dr. Graceffo in the ACF clinic and we discussed the above referenced Exhibit and the apparent changes in DOCS' Policy. Dr. Graceffo informed me that he would not treat me for HCV until I was either enrolled in or completed ASAT/RSAT, regardless of what he did in the past with inmate Pelkey.

j. On July 27, 2005 I filed Grievance No. 45299-05, which was denied without hearing (on 8/1/05), based solely on the statement made by Nancy Ryerson, Nurse Administrator of ACF.

k. On August 22, 2005 I filed an appeal to Superintendent John W. Burge, which he denied (on 8/24/05).

l. On August 28, 2005 I appealed Superintendent Burge's adverse decision to the CORC and on September 28, 2005 Thomas G. Eagen denied my appeal. **(EXHIBIT C)**(Grievance and all related responses)

m. All named defendants in this Action were fully appraised that their actions were in violation of numerous State and Federal Laws and they chose to constructively refuse plaintiff treatment for HCV, a potentially life threatening disease.

n. Hepatitis C replicates and/or multiplies by destroying healthy liver cells. Left untreated this insidious disease progresses from inflammation to fibrosis to cirrhosis to liver cancer and ultimately death. On March 22, 2000 plaintiffs' viral load count was at 1,000,000 copies/ml; on February 27, 2002 it progressed to 1,430,000 copies/ml; on January 7, 2004 it had further progressed to 11,996,294 copies/ml; and on September 30, 2005 it had reached 17,941,036 copies/ml. These results, excluding results from 9/30/05, were available to Dr.'s Graceffo and Kooi and Nurse Admin. Ryerson, as these test results are posted in plaintiffs' medical records and should have alerted them to the seriousness of plaintiffs' medical condition.

MEMORANDUM OF LAW

o. The Courts have recognized that HCV qualifies as a serious medical condition for purposes of an Eighth Amendment analysis. See Conti v Goord, No. 9:01-CV-1069 p.12(NDNY Aug.13,2004)(unpub. Decision & Order of Joseph M.Hood,D.J.); Johnson v Wright, 234 F.Supp.2d 352,360(SDNY 2002); McKenna v Wright, 2002 WL 338375, at *8(SDNY Mar.4,2002)(citing cases); Carbonell v Goord, 2000 WL 760751, at *9(SDNY June 13,2000).

p. Plaintiffs' refusal to participate in the ASAT/RSAT Program is based on legitimate First Amendment concerns. Plaintiff is an atheist and contends that the ASAT/RSAT Program is faith-based. Courts have previously considered this question and have found that the ASAT Program is based on the Alcoholics Anonymous "Twelve Step" program, "the dominant theme of which is unequivocally religious", and have concluded that coerced participation in ASAT violated the First Amendment. See Alexander v Schenck, 118 F.Supp.2d 298,300 n.1,301(NDNY 2000); Griffin v Coughlin, 88 NY2d 674,681,687(1996); see also DeStefano v Emergency Housing Group, Inc, 247 F.3d 397,407(2d Cir.2001); Warner v Orange Cty Dep't of Probation, 115 F.3d 1068,1075(2d Cir.1997).

q. The Equal Protection Clause of the 14th Amendment prohibits discrimination based upon your membership in a particular class of people. The provisions forbids discrimination based upon race, gender, ethnicity, religion, sexual orientation, or handicap.

DEFENDANTS

r. All defendants, named within this Action, acted under the color of State Law with deliberate indifference denying plaintiff a life necessity associated with adequate medical care/treatment. All defendants, individually and collectively, subjected plaintiff to discrimination by treating him differently and/or holding him to a higher standard, than others similarly situated, while denying plaintiff a life necessity. All defendants, individually and collectively, caused plaintiff to suffer undue, prolonged, irreversible Liver damage; loss of quality of life; undue stress and anxiety and prolonged loss of sleep and appetite through their unjust actions associated with the denial of physician recommended medical care/treatment for HCV.

THOMAS G. EAGEN

Thomas G. Eagen is the acting Director of the Inmate Grievance Program Central Office Review Committee and his principle office is located at 1220 Washington Avenue, Albany, New York 12226.

This defendant is liable under 42 USC §1983 in his Individual and Official capacity under the 1st,8th and 14th Amendments of the United States Constitution. Acting under the color of State Law as the Director of the Inmate Grievance Program, and having been fully appraised of the facts and law pertaining to this civil rights violation, he was grossly negligent in supervising subordinates; he acted with deliberate indifference to a serious medical need by denying plaintiffs' grievance requesting medical treatment for HCV and through this denial subjected plaintiff to discrimination.

JOHN W. BURGE

John W. Burge was the acting Superintendent of the Auburn Correctional Facility and his principle office was located at 135 State Street, Auburn, New York 13024.

This defendant is liable under 42 USC §1983 in his Individual and Official capacity under the 1st,8th and 14th Amendments of the United States Constitution. Acting under the color of State Law as the Superintendent of the ACF, and having been fully appraised of the facts and law pertaining to this civil rights violation as depicted in the filed grievance and his reply denying same, he was grossly negligent in supervising subordinates; he acted with deliberate indifference to a serious medical need by denying plaintiffs' grievance requesting medical treatment for HCV and through this denial subjected plaintiff to discrimination.

NANCY RYERSON, RN

Nancy Ryerson is the acting Nurse Administrator of the Auburn Correctional Facility and her principle office is located at 135 State Street, Auburn, New York 13024.

This defendant is liable under 42 USC §1983 in her Individual and Official capacity under the 1st,8th and 14th Amendments of the United States Constitution. Acting under the color of State Law as the Nurse Administrator of the ACF, and having been fully appraised of the facts and law pertaining to this civil rights violation as depicted in the filed grievance and her reply to same, she was grossly negligent in supervising subordinates; she acted with deliberate indifference to a serious medical need by ignoring the issues presented in plaintiffs' grievance thus subjecting plaintiff to discrimination.

ANTHONY GRACEFFO, MD

Dr. Anthony Graceffo was a medical doctor at the Auburn Correctional Facility and his principle office was located at 135 State Street, Auburn, New York 13024.

This defendant is liable under 42 USC §1983 in his Individual and Official capacity under the 1st,8th and 14th Amendments of the United States Constitution. Acting under the color of State Law as a medical doctor at the ACF he acted with deliberate indifference when he denied plaintiff medical care/treatment for HCV, a potentially life threatening disease, premised on plaintiffs' refusal to participate in the ASAT/RSAT Program. As evidenced in this Action this defendant was surreptitously treating other inmates, with the same medical condition as plaintiff, without their forced participation in ASAT/RSAT thus subjecting plaintiff to discrimination.

PANG KOOI, MD

Dr. Pang Kooi is a medical doctor at the Auburn Correctional Facility and his principle office is located at 135 State Street, Auburn, New York 13024.

This defendant is liable under 42 USC §1983 in his Individual and Official capacity under the 1st,8th and 14th Amendments of the United States Constitution. Acting under the color of State Law as a medical doctor at the ACF he acted with deliberate indifference when he denied plaintiff medical care/treatment for HCV, a potentially life threatening disease, premised on plaintiffs' refusal to participate in the ASAT/RSAT Program. This defendant was aware, through the Affidavit of inmate Pelkey and medical Department Records, that Dr. Graceffo was treating inmates with HCV without forced participation in ASAT/RSAT thus subjecting plaintiff to discrimination.

7) CAUSE OF ACTION

FIRST CAUSE OF ACTION:

Plaintiff is being denied adequate medical care/treatment for a potentially life threatening disease premised on plaintiffs' refusal to participate in a religious based program (ASAT/RSAT) prior to said care/treatment.

SECOND CAUSE OF ACTION:

Plaintiff is being subjected to cruel and unusual punishment through the denial of adequate medical care/treatment for a potentially life threatening disease.

THIRD CAUSE OF ACTION:

Plaintiff is being discriminted against as a specific group or class of people. Plaintiff is being held to a higher standard of approval, to gain medical care/treatment, as others in plaintiffs' same circumstances.

8) Plaintiff demands a trial by **COURT**

9) RELIEF/DAMAGES

WHEREFORE, plaintiff requests that this Court grant the following relief:

The named Defendants provide the following monetary compensation to plaintiff in the form of compensatory and punitive damages:

DEFENDANT	Compensatory	Punitive
Thomas G. Eagen	3,000,000.00	6,000,000.00
John W. Burge	3,000,000.00	6,000,000.00
Nancy Ryerson, RN	3,000,000.00	6,000,000.00
Anthony Graceffo, M.D.	3,000,000.00	6,000,000.00
Pang Kooi, M.D.	3,000,000.00	6,000,000.00

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 7, 2008

John Hatzfeld

John Hatzfeld #95A0396
Plaintiff; Pro se
Cayuga Correctional Facility
P.O. Box 1186
Moravia, New York 13118

Sworn to before me this

8th day of March, 2008.

Christopher J Ramsay

Christopher J. Ramsay
Notary Public State of New York
Tompkins County
# 01RA6180776
Comm.Exp. 02/04/12

EXHIBIT A

RECOMMENDATION OF DR. HOLTZAPPLE (dated 11/21/2002)

11/21/02 12:40:47 NYS DEPARTMENT OF CORRECTIONAL SERVICES PAGE 1
HSC478 HEALTH SERVICES SYSTEM
REQUEST AND REPORT OF CONSULTATION

NAME: HATZFELD, JOHN J DIN: 95A0396 DOB: 01/02/1955
CURRENT FAC: AUBURN GENER
REFERRING FAC : AUBURN GENER REFERRAL NUMBER: 02184781.01M
REFERRAL DATE : 10/02/02 02:11P TELEMED: N(N) REFERRAL TYPE : FOLLOW-UP
TYPE OF SERVICE: GASTROENTEROLOGY REFERRAL STATUS: SCHEDULED
URGENCY OF CARE: ROUTINE

REFERRED BY: ANTHONY GRACEFFO, MD APPOINTMENT: 12/18/02 01:30P
REVIEWED BY: SAMINA AHSAN, MD POS: WALSH RMU
PROV: HOLTZAPPLE, PHILLIP-GAS

REASON FOR CONSULTATION: USER: 10/02/02 02:11P C010BJB
(PATIENT FOLLOWED BY GI CLINIC. IT WAS REQUESTED THAT HE HAVE AN U/S GUIDED)
(LIVER BX, WHICH WAS DONE 9/30/02. PATIENT NEEDS TO RETURN TO GI CLINIC FOR)
(F/U. PLEASE SCHEDULE SAME.)
)
)
( )

CONSULTANT REPORT:

S: 43 yo male c̄ hepatitis C with grade 2/4 inflammation & stage 3/4 fibrosis.

O: He meets criteria for therapy and may benefit from therapy in that progression of fibrosis may be halted.

A: Rec: (1) Pegylated interferon therapy combined
(2) Ribavirin 1000 mg daily
(3) Check hepatitis c̄ [illegible] level in 3 months

P: (4) check genotype

CONSULTANT SIGNATURE: [signature] DATE: 12/18/02

IF FOLLOW-UP/PROCEDURE RECOMMENDED - REQUESTED BY 4/ - /04

EXHIBIT B

AFFIDAVIT OF JEFFREY L. PELKEY

ASAT/RSAT REFUSAL FORMS (dated 9/15/05 & 7/29/05)

AUTHORIZATION FOR RELEASE AND DISCLOSURE OF HEALTH INFORMATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

---X

JOHN HATZFELD,
D.I.N. 95-A-0396,
Plaintiff,

- against -

GLENN S. GOORD, Commissioner; LESTER WRIGHT, Chief Medical Officer; FRANK R. HEADLY, Dep. Commissioner; JOHN W. BURGE, Superintendent, Auburn Corr. Facility; MARK RABIDEAU, Dep. Supt. Auburn Corr. Facility; D. McCLENDON, RSAT Coordinator Auburn Corr. Fac.; W. ROBINSON, Nurse Administrator, Auburn Corr. Facility; S. AHSAN, Medical Dir. Auburn Corr. Fac.; ANTHONY GRACEFFO, Medical Dr., Auburn Corr. Fac.

Defendant.

AFFIDAVIT

Index No. 9:04-CV-0159 (NAM)(DRH)

---X

STATE OF NEW YORK)
COUNTY OF CAYUGA) ss.:

I, JEFFREY L. PELKEY #00-A-4448, being duly sworn deposes and says that:

1) I have prepared and read the foregoing, and know its contents to be true to my own knowledge, except those matters alleged to be based upon information and belief, and as to those matters, I believe them to be true.

2) I am currently incarcerated at the Auburn Correctional Facility, 135 State Street, Auburn, New York 13024.

3) On December 31, 2003, at the Upstate Correctional Facility, I was diagnosed with Hepatitis C.

4) Shortly after arriving at the Auburn Correctional

Facility I requested, through the medical staff, to receive treatment for Hepatitis C. On May 13, 2004, I was seen by Dr. Anthony Graceffo and was referred to see a gastroenterologist at the DOC'S Walsh Regional Medical Unit.

5) Treatment in the form of Peginterferon and Ribaviron for a period of six-months was recommended by this specialist.

6) On September 14, 2004, I was seen again by Dr. Anthony Graceffo and informed that prior to treatment I would need to participate in the RSAT Program. On September 15, 2004, I was interviewed by the RSAT Counselor and I refused to participate in the RSAT Program.

7) Notwithstanding this refusal, treatment in the form of Peginterferon and Ribaviron was started on September 17, 2004.

8) My Department of Corrections Disciplinary Records reflect that I tested positive for Cannabis (marijuana) twice during this term of incarceration (6/24/02 and 11/11/03) and I have a lengthy history of substance abuse. To date I have not been forced to participate in the RSAT Program and I am receiving the prescribed treatment.

Respectfully submitted,

DATED: 10/26/04

Jeffrey L. Pelkey

Jeffrey L. Pelkey #00-A-4448
Auburn Correctional Facility
135 State Street
Auburn, New York 13024

SWORN TO BEFORE ME THIS
26th DAY OF OCTOBER, 2004.

Andrea Abbott

ANDREA ABBOTT
Notary Public, State of New York
Qualified in Onondaga County
No. 01AB5074416
Commission Expires March 17, 2007

NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES

AUBURN CORRECTIONAL FACILITY

TO: Name: Jeff Pelkey DIN#: 00-A-4448 H.U.: B94

FROM: RSAT OFFICE

DATE: 9 · 15 · 04

RE: Residential Substance Abuse Treatment Program (RSAT)

✓ Refused RSAT Program at your Initial Interview with your counselor.

___ Inmate refused RSAT at Intake Interview.

___ Inmate notified RSAT office in writing he wishes to be removed from the RSAT waiting list.

Reason for Refusal: Refuse to move to C-Block

* If you change your mind and wish to participate in RSAT, you may notify the RSAT Office in writing to be placed on the RSAT waiting list.

___ Inmate signed out of RSAT and no longer wished to participate at this time.

Reason for Signing Out: __________

___ You may re-apply for the RSAT Program on __________ with a 500 word essay. The essay needs to include why you believe we should re-enter you in RSAT and what will be different for you this time in RSAT. You may send the essay to: RSAT Sr. Counselor.

___ Not sufficient time to complete RSAT.

* If you DO NOT receive an Open Date at your Parole Board hearing and would like to participate in RSAT, please notify the RSAT Office in writing.

___ No Documented history or self-reported substance abuse.

___ Previously completed ASAT, and completion has been verified. If you relapse (i.e..) receive Tier 3 report for drug related offense, you may write the RSAT Office to be placed on the waiting list.

___ Other: __________

I understand my Voluntary Sign Out or refusal to participate in the RSAT Program will result in notification to the Time Allowance Committee and Parole Board and may result in denial of Earned Eligibility and Merit Time Review, recommended loss of Good Time, and may effect area of preference transfers.

J. L. Pelkey	9·15·04	[signature] 9·15·0
Inmate Signature	Date	RSAT Staff

cc: Guidance File
RSAT Office

FORM 3617 (7/03)

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES

PROGRAM REFUSAL NOTIFICATION

NAME: [illegible handwriting] DIN: [illegible handwriting]

FACILITY: Auburn

I am refusing to participate in the following program:

- ☐ Academic
- ☐ Vocational
- ☒ Substance Abuse - ASAT
- ☐ Aggression - ART
- ☐ Sex Offender Program
- ☐ Transitional Services Phase _____
- ☐ Other: ____________________

I understand that refusal to participate in recommended programming may result in the denial of Parole, the loss of Good Time, denial of a Merit Time and/or Earned Eligibility Program certificate and ineligibility for an area of preference transfer. In addition, refusal to participate may affect placement in an outside clearance assignment, honor program housing and the family reunion program.

Signature of Inmate	Date	Staff Signature	Date
	7/29/05	[illegible signature]	7/29/05

☐ Inmate Refused to Sign

Distr:		
	White	Facility Guidance File
	Canary	Inmate
	Pink	Parole
	Goldenrod	Program Committee Chairperson

AUTHORIZATION FOR RELEASE AND DISCLOSURE OF HEALTH INFORMATION

Patient Name and DIN Number	Patient DOB	Patient SSI#
Jeffery Pelkey,#00-A-4448	1967	3763

I, **JEFFERY PELKEY**, hereby authorize the New York State Department of Correctional Services to disclose and release the above-named patient's health information, as described below, to any representative agent, official or designee of said State for the purpose of grievance proceedings and/or litigation.

TYPE AND AMOUNT OF INFORMATION TO BE DISCLOSED IS AS FOLLOWS:

The partial medical record/chart and health information of the above-named patient relating or pertaining only to this patient's Hepatitis C condition; limited to diagnostic tests and treatment. All records, writings or other information provided shall bear the certification or authentication of the physician releasing the information or the head of the hospital, laboratory, department or bureau of the municipal corporation that is releasing the information, or the employee delegated for that purpose.

This authorization shall remain in full force and effect until it expires five years from the date set forth below.

I understand that I have the right to revoke this authorization at any time. I understand that if I revoke this authorization, I must do so in writing. I understand that the revocation of this authorization will not apply to the extent that the health care provider has taken action in reliance thereon.

I understand that authorizing the disclosure of this health care information is voluntary. I understand that any disclosure of information carries with it the potential for an unauthorized redisclosure of the patient's health information by the recipient, resulting in the health information no longer being protected by Federal and State confidentiality rules.

A COPY OF THIS AUTHORIZATION MAY BE ACCEPTED WITH THE SAME FORCE AS THE ORIGINAL

STATE OF NEW YORK)
COUNTY OF CAYUGA) ss.:

Dated: 8/2/05

Jeffery L Pelkey
(Signature of patient)

Sworn to before me
on this 2nd day of August 2005

Andrea Abbott

ANDREA ABBOTT
Notary Public, State of New York
Qualified in Onondaga County
No. 01AB5074416
Commission Expires March 17, 2007

EXHIBIT C

GRIEVANCE & ALL RELATED RESPONSES

INMATE GRIEVANCE COMPLAINT

#22

Grievance No. 45299-05

AUBURN CORRECTIONAL FACILITY

John Hatzfeld #95A0396, B-9-10
Program: WW 7-3

RECEIVED BY:
AUBURN I.G.R.C.
ON 7/27/05

Description of Problem:

On 6/30/05 I was seen by Dr.Kooi in the ACF Clinic to discuss a change in the policy of forced participation in RSAT prior to receiving treatment for HCV. (See, Exhibit A) After Dr.Kooi read Exhibit A he stated that he was unaware of this change and referred me to Dr.Graceffo since he was the treating physician in the referenced case.

On 7/21/05 I was seen by Dr.Graceffo in the ACF Clinic and discussed the above referenced Exhibit and the changes in DOCS' policy. Dr.Graceffo informed me that he would not treat me for HCV until I was either enrolled in or completed RSAT, regardless of what he did in the past.

Exhibit A, Affidavit of Jeffery Pelkey #00-A-4448, in sum and substance states that: He has a long history of substance abuse, has tested positive twice for controlled substances during this term of incarceration, refused to participate in the RSAT Program and received treatment for HCV notwithstanding his refusal.

I have been incarcerated for 12 years. During that time I have maintained an Institutional Disciplinary Record free of any alcohol or substance abuse violations. The RSAT Program, being spiritually based, is contrary to my religious beliefs as I am an atheist.

I explained to Dr.Graceffo that his refusal to treat me for HCV, forcing me to participate in the RSAT Program against my religious beliefs and holding me to a higher standard of approval before receiving treatment were all violations of State and Federal Law.

Specifically, the First Amendment Establishment Clause, which the 14th Amend. make applicable to States, establishes that government may not coerce anyone to participate in religion or its exercise. The Fifth Amend. protects against deprivations of life, liberty and property without due process of law. The Eighth Amend protects against deprivations of life necessities and "cruel and unusual" punishment. The Fourteenth Amend. Equal Protection Clause protects against discrimination.

As such, Dr.'s Kooi and Graceffo are violating my civil rights due to their refusal to treat me for HCV, and by forcing me to participate in RSAT.

Action requested by inmate: To be placed on treatment program for HCV without being forced to participate in RSAT.

Grievant Signature: John Hatzfeld Date: 7/23/05

EXHIBIT "A"

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF CAYUGA) ss.:

I, JEFFREY L. PELKEY #00-A-4448, being duly sworn deposes and says that:

1) I have prepared and read the foregoing, and know its contents to be true to my own knowledge, except those matters alleged to be based upon information and belief, and as to those matters, I believe them to be true.

2) I am currently incarcerated at the Auburn Correctional Facility, 135 State Street, Auburn, New York 13024.

3) On December 31, 2003, at the Upstate Correctional Facility, I was diagnosed with Hepatitis C.

4) Shortly after arriving at the Auburn Correctional

Facility I requested, through the medical staff, to receive treatment for Hepatitis C. On May 13, 2004, I was seen by Dr. Anthony Graceffo and was referred to see a gastroenterologist at the DOC'S Walsh Regional Medical Unit.

5) Treatment in the form of Peginterferon and Ribaviron for a period of six-months was recommended by this specialist.

6) On September 14, 2004, I was seen again by Dr. Anthony Graceffo and informed that prior to treatment I would need to participate in the RSAT Program. On September 15, 2004, I was interviewed by the RSAT Counselor and I refused to participate in the RSAT Program.

7) Notwithstanding this refusal, treatment in the form of Peginterferon and Ribaviron was started on September 17, 2004.

8) My Department of Corrections Disciplinary Records reflect that I tested positive for Cannabis (marijuana) twice during this term of incarceration (6/24/02 and 11/11/03) and I have a lengthy history of substance abuse. To date I have not been forced to participate in the RSAT Program and I am receiving the prescribed treatment.

Respectfully submitted,

DATED: 10/26/04

Jeffrey L. Pelkey

Jeffrey L. Pelkey #00-A-4448
Auburn Correctional Facility
135 State Street
Auburn, New York 13024

SWORN TO BEFORE ME THIS

26th DAY OF OCTOBER, 2004.

Andrea Abbott

ANDREA ABBOTT
Notary Public, State of New York
Qualified in Onondaga County
No. 01AB5074416
Commission Expires March 17, 2007

Response of IGRC:

Hatzfeld J. 95-A-0396 Gri. # 45299 Code. #22.0 B-09-10

Action requested is denied. As per N.A: Per the Hep C guidelines for treatment, RSAT is a requirement. Per Hippa regulations medical staff are bound by law not to discuss the medical condition of the grievant or anybody else.

Date Returned to Inmate 08/01/05 IGRC Members

Chairperson

Return within 4 days and check appropriate boxes.

☐ I disagree with IGRC response.

☐ I agree with the IGRC response.

☐ I have reviewed deadlocked responses. Pass-Thru to Superintendent

☐ I wish to appeal to the Superintendent.

Signed ______________________ ______________
Grievant Date

______________________ ______________
Grievance Clerk's Receipt Date

To be completed by Grievance Clerk.

Grievance Appealed to the Superintendent ______________
Date

Grievance forwarded to the Superintendent for action ______________
Date

INMATE GRIEVANCE COMPLAINT

Grievance No. ____________

AUBURN CORRECTIONAL FACILITY

John Hatzfeld #95A0396, B-9-10
Program: WW 7-3

Description of Problem:

On August 16,2005 I received a denial to Grievance #45299-05, from the IGRC.(See attached Form 2131) Also, on August 16, 2005 I sent a correspondence to the IGP Supervisor, Ms.Parmiter, explaining the error made by the IGRC and requested that this Grievance be re-submitted and processed in accordance with Directive 4040.(See correspondence dated 8/16/05) To date I have not received a response from Ms.Parmiter.

Grievance #45299-05 specifically addresses Departmental Policy and acts of Discrimination, which are beyond the purview of the IGRC, and should have been forwarded to the Superintendent and the Office of Diversity Management within twenty-four (24) hours of receipt.(Directive 4040 Section IX,A through I)

The IGRC's and the Nurse Administrator's responses in this matter are therefore moot.

The Nurse Administrator's statement that; "Per HIPPA regulations medical staff are bound by law not to discuss the medical condition of the grievant or anybody else", is patently false. If this were the case, complaints concerning anything relating to medical issues would be non-grievable.

As per the Affidavit of J.Pelkey, which was attached to Grievance #45299-05, any matters contended within that Affidavit are open to discussion and any right to confidentiality protection waived. Also, Mr.Pelkey has filed, with the Medical Department, an Authorization for Release and Disclosure of Health Information specifically releasing the necessary health care information to address matters contended in Grievance #45299-05.(See attached Release) This Release should be attached as an addendum to Grievance #45299-05 to avoid any future confusion concerning this matter.

ACTION REQUESTED: To have Grievance 45299-05 processed in accordance with Directive 4040 Section IX,A through I without further delay.

Grievance Signature: *John Hatzfeld* Date: 8/22/05

STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES **INMATE GRIEVANCE PROGRAM** **SUPERINTENDENT**	**GRIEVANCE NO. 45299-05**	DATE FILED **8/18/05**
	FACILITY **AUBURN**	POLICY DESIGNATION **POLICY**
	TITLE OF GRIEVANCE **Wants a Treatment Program**	CLASS CODE **22**
	SUPERINTENDENT'S SIGNATURE [signature]	DATE **8/24/05**
GRIEVANT **J. Hatzfeld**	DIN # 95-A-0396	HOUSING UNIT **B-9-10**

Grievance appeal denied, with explanation.

Grievant is advised that guidelines state participation in a workbook ASAT program as a requirement for Hepatitis C treatments. See your counselor to get a workbook.

HIPPA regulations prohibit the disclosure of another's medical background to you.

Your rights have not been violated or diminished. The completion of the workbook is not considered completion of RSAT.

APPEAL STATEMENT

If you wish to refer the above decision to the Superintendent, please sign below and return this copy to your inmate grievance clerk. You have four (4) working days from receipt of this notice to file your appeal. Please state why you are appealing this decision to C.O.R.C.

This Appeal is being forwarded "On The Record", with Exhibits, and a Statement of Facts. (See attached)

John Hatzfeld
Grievant's Signature

Aug. 28, 2005
Date

Grievance Clerk's Signature

Date

FORM 2133A (Rev. 2/89)

GRIEVANCE APPEAL TO CORC

Grievance No.45299-05
Grievant: J.Hatzfeld,#95A0396
Facility: Auburn Corr.Fac.

Grievance No.45299-05 is being appealed to the CORC because the issues raised have not been addressed and the evidence presented, in the form of an Affidavit (Exhibit A) and a Medical Release (Addendum) authored by J.Pelkey, has been constructively ignored.

DOCS claim that participation in and/or completion of ASAT/RSAT is required prior to treatment for HCV. Exhibit A, the Affidavit of J.Pelkey a current NYS inmate, renders that assertion patently false. Exhibit A, in sum and substance, states that; Mr. Pelkey, 00-A-4448, has a long history of substance abuse, has tested positive twice for controlled substances during this term of incarceration, refused to participate in the RSAT Program and received treatment for HCV notwithstanding his refusal.

Also, Mr.Pelkey has supplied a release, in the form of an Authorization for Release and Disclosure of Health Information, (Attached as Addendum), which grants permission for a review of his medical records to support his Affidavit. As such, HIPPA regulations will not be violated through this disclosure.

DOCS refusal to afford me the same treatment, as received by inmate Pelkey, is clearly Discrimination and violates State and Federal Law. I am in the same class of people, I have the same disease yet, I'm being held to a higher standard of approval when, in fact, I have no Disciplinary Violations on my record for alcohol and/or substance abuse.

When Dr.Graceffo, an employee/representative of DOCS, treated inmate Pelkey for HCV without the requisite participation in the ASAT/RSAT Program he effectively rendered the Policy of forced participation in same null and void.

DOCS can not profess, as their credo, "Fair-Firm-Consistent" when they arbitrarily enforce a Policy. The question remains: Why does an inmate with a documented history of substance abuse receive treatment without being forced to participate in ASAT/RSAT and an inmate with no documented history of substance abuse is denied treatment due to his refusal to participate in ASAT/RSAT???

A refusal, by this Committee, to grant the relief sought would be immoral and completely illogical. DOCS Policy of forced participation in a substance abuse program, prior to receiving treatment for HCV, is not supported by clinical consensus. It is recommended that: "Strict abstinence from alcohol is recommended during therapy... Typically a 6-month abstinence is recommended before starting therapy... Patients with continuing problems of alcohol or substance abuse should only be treated in collaboration with alcohol or substance abuse specialists or counselors".(Exhibit B,pg.14of23)' People who do not display problems with abstinence need not be placed in abuse programs.

Grievant: John Hatzfeld   Date: August 28,2005

STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES	Grievance Number AUB-45299-05	Desig./Code I/22	Date Filed 7/27/05
	Facility Auburn Correctional Facility		
	Title of Grievance Wants A Treatment Program		
INMATE GRIEVANCE PROGRAM CENTRAL OFFICE REVIEW COMMITTEE	Director's Signature T. G. Eagen		Date 9/28/05

9/28/05

GRIEVANT'S REQUEST UNANIMOUSLY DENIED WITH CLARIFICATION

Upon full hearing of the facts and circumstances in the instant case, and upon recommendation of the Division of Health Services, the action requested is hereby denied with clarification. CORC upholds the determination of the Superintendent for the reasons stated.

CORC advises the grievant to follow staff direction, and participate in the ASAT workbook program. CORC asserts that the Department's Hepatitis C Primary Care Practice Guidelines are being followed. CORC also advises the grievant to address his medical concerns through sick call.

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